

JS-6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LUIS MARTIN GONZALEZ ELIAS,

Plaintiff,

vs.

INTEGON PREFERRED
INSURANCE COMPANY,

Defendant.

Case No.: 2:24-cv-01981- WLH-RAOx

**ORDER GRANTING MOTION TO
REMAND [9]**

Before the Court is Plaintiff Luis Martin Gonzalez Elias’s (“Plaintiff”) Motion to Remand. (Mot., Docket No. 9). For the following reasons, the Motion is **GRANTED**.

I. BACKGROUND

This is an action for insurance bad faith for refusal to properly and timely pay uninsured motorist benefits under Plaintiff’s policy. (Notice of Removal, Docket No. 1, Ex. 1 (“Compl.”) ¶ 1). On May 14, 2021, Plaintiff was seriously injured in a car accident with an uninsured motorist while driving his daughter’s car. (*Id.* ¶¶ 15, 98). At the time, Plaintiff alleges, he had an insurance policy with Defendant Integon Preferred Insurance Company (“Defendant”) that provided for uninsured motorist

1 benefits. (*Id.* ¶ 97). Plaintiff alleges that when he requested payment from Defendant,
2 Defendant “unreasonably and unjustifiably fail[ed] to timely and fully pay [his] claims
3 under the subject policy.” (*Id.* ¶ 104). It is undisputed, however, that Defendant
4 “ultimately decided to extend coverage and paid the uninsured motorist limit of
5 \$15,000,” plus payment for the damages to the vehicle.¹ (Opp’n, Docket No. 12 at 2;
6 *see also* Decl. of Eric Bryan Seuthe in Supp. of Mot., Docket No. 9-1 ¶ 9).

7 On February 9, 2024, Plaintiff brought this action against Defendant in the Los
8 Angeles County Superior Court. (*See generally id.*). He asserts four claims for (1)
9 breach of the implied covenant of good faith and fair dealing, (2) fraud, (3) intentional
10 misrepresentation, and (4) negligent misrepresentation. (*Id.*). He seeks general and
11 special damages, punitive/exemplary damages, attorney’s fees and costs for this action,
12 and interest. (*Id.* at 29, “Prayer for Relief”).

13 On March 12, 2024, Defendant removed this action to federal court on the basis
14 of diversity jurisdiction. (Notice of Removal). Defendant states that Plaintiff and
15 Defendant are citizens of different states. (*Id.* ¶ 8). Moreover, though Plaintiff does
16 not specify an amount of damages in his Complaint, Defendant asserts that, based on
17 the facts alleged in the Complaint and the outcomes of similar cases in California, the
18 amount-in-controversy minimum of \$75,000 is met. (*Id.* ¶¶ 4–7).

19 On April 12, 2024, Plaintiff filed the instant Motion to Remand. (Mot.). Plaintiff
20 does not contest that he and Defendant are citizens of different states, but he asserts
21 that Defendant has not met its burden to show the amount in controversy exceeds
22 \$75,000. (*Id.*). Therefore, Plaintiff argues, this Court has no subject matter jurisdiction
23 over the case.

24
25 ¹ Though this is not stated in the Complaint or Notice of Removal, Defendant makes
26 this assertion in its Opposition to the Motion to Remand, so it is properly considered
27 on this Motion. *See Woolsey v. State Farm Gen. Ins. Co.*, 672 F. Supp. 3d 1018, 1025
28 (C.D. Cal. 2023) (“When determining the amount in controversy, district courts are
allowed to consider [sic] evidence submitted subsequent to the notice of removal,
including evidence submitted in conjunction with an opposition to a motion to
remand.”)

II. ANALYSIS

Under 28 U.S.C. § 1332(a), a district court “shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs,” and there is complete diversity of citizenship between the parties. Pursuant to 28 U.S.C. § 1441(a), an action may be removed from a state court to a federal district court if the district court would have had “original jurisdiction” over the action had it been filed in that court.

On a motion to remand, “[t]he removal statute is strictly construed, and any doubt about the right of removal requires resolution in favor of remand.” *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (citing *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)). When a plaintiff moves to remand on the basis that the amount-in-controversy requirement is not met, and the complaint does not specify a damages amount, “the removing defendant must prove by a preponderance of the evidence that the amount in controversy requirement has been met.” *Campbell v. Hartford Life Ins. Co.*, 825 F. Supp. 2d 1005, 1007 (E.D. Cal. 2011) (quotations omitted). To meet this standard, the defendant must point to “allegations in the complaint and in the notice of removal” and provide “summary-judgment-type evidence relevant to the amount in controversy.” *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018). “The amount in controversy may include ‘damages (compensatory, punitive, or otherwise) and the cost of complying with an injunction, as well as attorneys’ fees awarded under fee shifting statutes.’” *Id.* (quoting *Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644, 649 (9th Cir. 2016)).

A. Attorney’s Fees and Costs

Attorney’s fees “may ... be considered in determining the amount in controversy if such fees are recoverable by plaintiff, either by statute or by contract.” *Campbell*, 825 F. Supp. 2d at 1009 (citing *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir.1998)). Under California law, attorney’s fees “are recoverable ‘[w]hen an insurer’s tortious conduct reasonably compels the insured to retain an attorney to obtain the

benefits due under a policy.” *Id.* (quoting, with alterations, *Brandt v. Superior Court*, 37 Cal.3d 813, 815 (1985)). “A district court may reject the defendant’s attempts to include future attorneys’ fees in the amount in controversy,” however, “if the defendant fails to satisfy [its] burden of proof.” *Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 795 (9th Cir. 2018).

Defendant has not satisfied its burden of proof here. Defendant estimates Plaintiff’s attorney’s fees at \$71,700 based on 239 hours of work on this litigation—including 40 hours to prepare for and conduct depositions and 100 hours for a 7-day trial—at the rate of \$300 per hour. (*Id.*). Defendant arrived at this estimate based on Defendant’s counsel’s “experience and specific factors present in the case.” (Decl. of Tyler R. Austin in Supp. of Opp’n, Docket No. 12-1 ¶ 4). While the Court appreciates the experience of Defendant’s counsel in litigating similar cases, his declaration setting out the above estimates is not “summary-judgment-type” evidence. *Chavez*, 888 F.3d at 416. Defendant’s counsel does not explain what “specific factors present in the case” lead him to make the above estimates. *Cf. Sley v. USAA Cas. Ins. Co.*, No. 5:16-cv-04882-HRL, 2017 WL 2114773, at *3 (N.D. Cal. May 16, 2017) (in insurance bad faith case, finding defendant’s attorney’s fees estimate “too speculative” because defendant failed to support time and rate estimates with facts). Defendant’s estimate of attorney’s fees is not supported by a preponderance of the evidence, and the Court declines to consider the estimate in calculating the amount in controversy.

B. Punitive Damages

“As with attorneys’ fees, punitive damages may be considered when determining the amount in controversy if they are recoverable as a matter of state law.” *Woolsey*, 672 F. Supp. 3d at 1027 (citing *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001)). Here, Plaintiff seeks punitive damages for breach of the implied covenant of good faith and fair dealing. (Compl. ¶ 36). Under California law, punitive damages are available in this type of action if “the defendant has been guilty of oppression, fraud,

1 or malice” Cal. Civ. Code § 3294. They are therefore properly included in the
2 Court’s calculation of the amount in controversy.

3 When the plaintiff has not specified a punitive damages amount, “the removing
4 party ‘may introduce evidence of jury verdicts in cases involving analogous facts’ in
5 order to establish probable punitive damages.” *Aguilar v. Wells Fargo Bank, N.A.*, No.
6 15-cv-01833-AB-SPX, 2015 WL 6755199, at *6 (C.D. Cal. Nov. 4, 2015) (quoting
7 *Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1033 (N.D. Cal. 2002)). For such cases
8 to serve as evidence of damages, “the cases must be factually identical or, at a
9 minimum, analogous to the case at issue.” *Id.* at *5 (quoting *Mireles v. Wells Fargo*
10 *Bank, N.A.*, 845 F. Supp. 2d 1034, 1055 (C.D. Cal. 2012)).

11 Defendant provides as an example a single case in which the jury awarded
12 punitive damages, in the amount of \$100,000. (Opp’n at 8 (citing *McCoy v.*
13 *Progressive West Ins. Co.*, 2007 WL 2068578 (Cal. Super. Mar. 29, 2007)). *McCoy* is
14 materially distinguishable from this case, however. There, the plaintiff filed an
15 insurance claim after his car was stolen. *Id.* The defendant insurance company let the
16 claim languish for one year before ultimately denying it. *Id.* The defendant based its
17 denial on its contention that “its investigation of the claim had determined that it was
18 fraudulent and that the theft was staged.” *Id.* Here, while Plaintiff similarly alleges
19 that Defendant let his claim languish for an extended period of time, this case is unlike
20 *McCoy* in that Defendant ultimately approved Plaintiff’s claim and paid him \$15,000,
21 plus the cost of the damage to Plaintiff’s daughter’s car. Moreover, there is nothing to
22 indicate that Defendant wrongly accused Plaintiff of filing a fraudulent claim, as the
23 defendant did in *McCoy*. *McCoy* is thus not sufficiently analogous to serve as evidence
24 of punitive damages in this case. *Cf. Woolsey*, 672 F. Supp. 3d at 1028 (finding
25 defendant’s case examples were not sufficiently analogous to establish punitive
26 damages because plaintiffs did “not allege[] a similar type of misconduct”); *Sley*, 2017
27 WL 2114773, at *4 (finding defendant’s “proffered exemplars” were not sufficiently
28 analogous because they “involved conduct more egregious than that alleged here”).

1 Because Defendant has failed to provide a case similar enough to establish the amount
 2 of punitive damages at stake, the Court will not consider Defendant's punitive damages
 3 estimate in calculating the amount in controversy.

4 **C. Emotional Distress Damages**

5 Similarly, Defendant does not meet its burden to establish, by a preponderance
 6 of the evidence, the emotional distress damages at stake in this case. "Establishing
 7 probable emotional distress damages is done the same way as for punitive damages—
 8 by introducing evidence of jury verdicts from cases with analogous facts." *Reyes v.*
 9 *Staples Off. Superstore, LLC*, No. 19-cv-07086-CJC-SKX, 2019 WL 4187847, at *4
 10 (C.D. Cal. Sept. 3, 2019). Defendant points to three cases, including *McCoy*, that it
 11 claims are analogous to this one for the purpose of establishing that "the average
 12 emotional distress recovery in ... similar jury verdicts and settlements ... was
 13 \$329,667." (Opp'n at 7–9 (citing *White v. GEICO Indem. Co.*, 2014 WL 1394317 (Cal.
 14 Super. Mar. 18, 2014); *McCoy*, 2007 WL 2068578; *Martinez v. Mercury Ins. Co.*, 2014
 15 WL 3845738 (Cal. Super. June 16, 2014))).

16 As discussed above, though, *McCoy* is not sufficiently analogous to this case.
 17 For similar reasons, the other two cases Defendant raises, *White* and *Martinez*, are not
 18 illustrative of the emotional distress damages Plaintiff might recover here. In *White*,
 19 the plaintiffs filed a claim after they were involved in a two-car accident. 2014 WL
 20 1394317. The defendant insurance company denied the plaintiffs' claim, asserting that
 21 "the damages to the vehicle were inconsistent with the accident report." *Id.* At trial,
 22 the defendant testified that it denied the claim based on the findings of "an independent
 23 forensic engineer who found there was no collision between the two vehicles." *Id.* The
 24 jury found that the defendant had acted in bad faith and awarded the plaintiff \$326,000
 25 in emotional distress damages. *Id.* And in *Martinez*, not only did the defendant
 26 insurance company deny the plaintiff's claim based on an investigator's suspicion of
 27 fraud, but it also "instituted a fraud investigation by reporting plaintiff, his entire family
 28 including children and an infant, his doctors and his attorney to two national Fraud

1 Bureaus, prior to any investigation confirming any suspicion of fraud.” 2014 WL
2 3845738. The \$600,000 in emotional distress damages awarded to plaintiff in *Martinez*
3 are therefore not indicative of the amount at stake in this action. As with punitive
4 damages, then, Defendant has not provided the Court with sufficiently analogous cases
5 to determine the amount in controversy for emotional distress.

6 **III. CONCLUSION**

7 In sum, Defendant has failed to prove, by a preponderance of the evidence, that
8 the amount in controversy in this case exceeds \$75,000. The Court therefore **GRANTS**
9 Plaintiff’s Motion to Remand for lack of subject matter jurisdiction. This action shall
10 be remanded to the Superior Court of the State of California for the County of Los
11 Angeles.

12 The Clerk is directed to close this file.

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14 **IT IS SO ORDERED.**

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16 Date: May 28, 2024



17 HON. WESLEY L. HSU
18 UNITED STATES DISTRICT JUDGE
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